

BEFORE LINDA MCCULLOCH, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

DISTRICT NO. 3 ROOSEVELT)	OSPI 290-02
COUNTY, FRONTIER SCHOOL)	
)	
Appellant,)	
)	DECISION AND ORDER
)	
vs.)	
)	
BEN and WANDA REDEKOPP,)	
On behalf of TRAVIS REDEKOPP,)	
)	
Respondents.)	
)	

Having reviewed the record below and considered the parties' briefs, the Superintendent of Public Instruction issues the following Decision and Order.

DECISION AND ORDER

Appellant's Motion to Reverse the Acting County Superintendent's Denial of the District's Motion to Dismiss is hereby GRANTED. The County Superintendent's legal conclusion that he had jurisdiction over this appeal is hereby REVERSED. The District's Motion to Dismiss the appeal is GRANTED.

PROCEDURAL HISTORY

This is an appeal by District No. 3, Roosevelt County, Frontier School ("the District") from the Acting Roosevelt County Superintendent's ("the County Superintendent") determination that the County Superintendent had jurisdiction to hear an appeal filed by Ben and Wanda Redekopp on behalf of Travis Redekopp ("the Respondents").

On July 16, 2002, the District's Superintendent notified Respondents of the District's Board of Trustees' decision to deny an attendance agreement for the benefit of Travis Redekopp. Respondents filed an appeal of this decision with the Roosevelt County Superintendent on August 13, 2002. The County Superintendent notified the District and Respondents on August 14, 2002, of the receipt of the appeal and set a briefing schedule. Respondents filed their Brief in

Support of Notice of Appeal on August 20, 2002. The District filed a Motion to Dismiss, Motion for a More Definite Statement, and Memorandum in Support on August 22, 2002. Respondents filed a Notice of Amended Appeal and Brief in Support on September 11, 2002. The District filed a Motion to Disqualify the Roosevelt County Superintendent on September 12, 2002. The Acting Roosevelt County Superintendent was appointed, and he determined that he had jurisdiction to hear the appeal and denied the District's Motion to Dismiss the Appeal on September 19, 2002. The District filed a Notice of Immediate Appeal with the State Superintendent of Public Instruction ("State Superintendent") on October 3, 2002. The State Superintendent issued a Notice and Briefing Schedule on October 4, 2002. The District filed its Initial Brief on November 6, 2002. Respondents did not file a responsive brief.

The District filed a Motion and Brief to Reverse the Acting County Superintendent's Denial of the District's Motion to Dismiss on December 18, 2002. The State Superintendent issued a Briefing Schedule for the District's December 18, 2002, motion on December 19, 2002. Respondents filed a "Motion & Brief in Opposition to Appellants' [December 18, 2002] Motion & Brief Reverse the Acting County Superintendent's Denial of the District's Motion to Dismiss" [sic] on January 3, 2003. The District waived its opportunity to submit a reply brief to the Appellant's January 3, 2003, Motion on January 9, 2003.

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in Mont. Code Ann. §2-4-704 and adopted by the State Superintendent in Admin. R. Mont. 10.6.125. A County Superintendent's determination of jurisdiction is a conclusion of law. The Montana Supreme Court has held that conclusions of law are reviewed to determine if the agency's interpretation of the law is correct. *Steer, Inc. v. Dept. of Revenue*, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

OPINION

The District filed an immediate appeal from the Acting County Superintendent's determination that he had jurisdiction to hear Respondents' appeal of the District's decision. The State Superintendent established a briefing schedule and served the same on both parties. The District complied by filing its Initial Appellant's Brief as and when due. Respondents did not file an answer brief nor did they request an extension of time in which to file their brief.

Although the State Superintendent is not required to apply the Montana Rules of Civil Procedure in this matter, the same can be looked to for guidance. See *Yellowstone County School District No. 7-70, Laurel v. Michunovich*, OSPI 285-01 (2001) ("Granted, there are instances in which county superintendents and the State Superintendent have looked to and relied on the Rules of Civil Procedure and the Supreme Court cases interpreting the same. However, in those instances, the superintendents were not required to follow the Rules of Civil Procedure.") The State Superintendent finds that these rules are relevant and helpful in this instance.

Rule 12 of the Montana Rules of Civil Procedure provides that "failure to file briefs within the prescribed time shall subject said motion to summary ruling, ... such failure to file such a brief by the adverse party shall be deemed an admission that in the opinion of counsel the motion is well taken...". While Respondent did reply to the District's Motion and Brief to Reverse the Acting County Superintendent's Denial of the District's Motion to Dismiss, the reply was non responsive to the issue presented by the District in its Initial Brief of Appellant or to the District's Motion and Brief.

The Supreme Court has held that "the courts and counsel should be able to rely on duly adopted court rules which are made to be followed by both the court and counsel, and not ignored." *McLaughlin v. Hart*, 213 Mont. 216, 690 P.2d 431. In this instance, the order establishing a briefing schedule is similar to "adopted court rules". The District had a right to rely on the established briefing schedule. Respondents' counsel did not make any attempt to contact the State Superintendent to advise her of his illness or the need for an extension of time in which to file Respondents' brief.

The State Superintendent deems that Respondents' failure to file its initial brief in this appeal and their failure to file a brief responsive to the District's December 18, 2002, Motion acts as an admission on Respondents' part. The District's arguments are therefore well taken.

CONCLUSION

The District's Motion to Reverse the Acting County Superintendent's Denial of the District's Motion to Dismiss is hereby GRANTED. The County Superintendent's legal conclusion that he had jurisdiction over this appeal is hereby REVERSED. The District's Motion to Dismiss the appeal is GRANTED.

Dated this 30th day of June, 2003.

/s/ Linda McCulloch
LINDA MCCULLOCH
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 30th day of June, 2003, I caused a true and exact copy of the foregoing "DECISION AND ORDER" to be mailed, postage prepaid, to the following:

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